

***United States Court of Appeals  
for the Second Circuit***



**PETITION FOR  
REHEARING**



# 74-1550

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In The  
**United States Court of Appeals**  
For The Second Circuit

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UNITED STATES OF AMERICA,

*Appellee,*

vs.

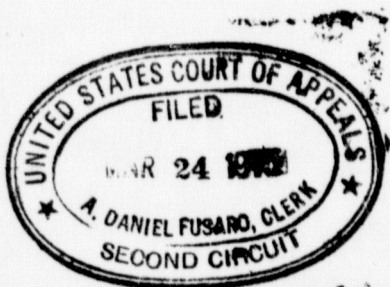
CARMINE TRAMUNTI, et al.,

*Appellants.*

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## PETITION FOR REHEARING

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In The  
**United States Court of Appeals**

For The Second Circuit

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Docket No. 74-1550

UNITED STATES OF AMERICA,

*Appellee,*

vs.

CARMINE TRAMUNTI, et al.,

*Appellants.*

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**PETITION FOR REHEARING**

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To:

The Honorable, The Judges of the United States Court  
of Appeals for the Second Circuit:

The petition of Carmine Tramunti, one of the defendants appellants in the case of *United States of America v. Carmine Tramunti, et al.*, filed pursuant to Rule 25 of the Rules of this Court, respectfully prays for a rehearing by the original Panel or in the alternative for a rehearing by the Court en banc of this Court's decision of March 7th, 1975, affirming the judgment of conviction against the defendant-appellant, Carmine Tramunti.

The facts as stated in the opinion as filed on March 7th, 1975, are demonstrably incorrect and incomplete. The result reached on the basis of this inaccurate fact statement is inconsistent with prior decisions of this Honorable Court.

This Honorable Court is requested to reconsider the opinion filed March 7th, 1975, and in so doing (1) to correct the statement of fact and (2) to modify its opinion and judgment in light of the true facts and reverse the judgment of conviction against the defendant-appellant, Carmine Tramunti.

### THE FACTUAL ERRORS

1. This Honorable Court in its decision, in setting forth the facts, overlooked the fact that Tramunti stated "well, try to get him out", (T395),\* prior to any conversation about an organization or the usefulness of Lentini as a figurer and mixer to the organization.

It is conceded that if Tramunti had heard the conversation, between Inglese and Stasi, concerning an organization, then at that point, and for the first time in the record, it could now be inferred that Tramunti had knowledge that Stasi and Inglese were engaged in drugs. It is notable that Tramunti did not answer nor respond in any way, nor did he ever again, after that conversation, between Inglese and Stasi, suggest anything.

Tramunti, after that statement made by Gigi to Stasi, never said anything or gave instruction to anyone to "try to get him out". If Lentini, was in fact important to an organization or conspiracy, that Tramunti was supposedly a boss or part of, would it not be more believable that Tramunti would, after hearing how important Lentini was, have said "yes Gigi you are right, we have to try to get him out", and would he not then and there give an instruction as to how Lentini was to be gotten out? He certainly would not have said, if he was a boss and someone in the organization had come to him for help, "there's nothing I could do about that".

2. This conversation with respect to Lentini is a conversation subsequent to the conversation at the LoPiccolo where Stasi is supposed to have overheard Inglese tell Tramunti

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\* "T" refers to pages in the transcripts of the trial minutes.



"I expect some goods, I am going to need some money" and subsequent to the conversation at the "Tear Drops Bonsoir".

It is respectfully submitted that if the Lentini conversation puts knowledge into Tramunti, that knowledge cannot be related back in time, and does not in any way affect the opinion of this Court, as it appears on page 2147 of the opinion:

"[E]ven so, with just these conversations in mind, there is still no direct tie of Tramunti to Inglese's business or furtherance of its objects, and no proof beyond a reasonable doubt that 'goods' meant narcotics to Tramunti or that the phrase 'what's happening at the club' or 'what's happening' or 'nothing's happening' had reference to the narcotics business."

3. Furthermore, it appears that this Honorable Court overlooked the words of Tramunti just prior to his having said, "well, try to get him out". The full testimony (T395), is "Gigi had told Carmine Tramunti, he says, 'we are having a tough time getting Moe Lentini out' so with that Carmine says, 'well, get him out', and Carmine says, he says, 'what is the bail'? Gigi says, 'it's \$75,000.00'. So Carmine replied, he says, 'you mean to tell me you can't get up \$75,000.00? well, try to get him out'. Gigi says, (T396), 'it's not the \$75,000.00. We need collateral. We need property'. So with that, Carmine says, 'there is nothing I can do about that'."

These were the last words Tramunti is reported to have said in the record.

If Tramunti had in fact been a member, not to mention, the boss of this organization or conspiracy, he would not have shifted the responsibility of raising the \$75,000.00. He stated to Inglese, "you mean to tell me you can't get up \$75,000.00?" (T395), Tramunti did not say we can't raise \$75,000.00. Surely

those words "you mean to tell me you can't get up \$75,000.00?", are not the words of a boss who has responsibility to his men, or co-conspirators.

It is noteworthy to note that Tramunti did not offer any money or any property in an attempt to get Lentini out, and when Tramunti said, "well, try to get him out", he simply took the politest and easiest position of refusal, by clearly indicating to Inglese that it was Inglese's problem, not Tramunti's.

4. It is respectfully submitted that the Court's statement (p. 2147 of the opinion) that "the Jury may well have considered that the statement 'well Gigi had says to me, "jeez, I'd like to get him out, because it's important to the organization . . . , so we've got to try to get him out"' was directed at Tramunti, is untenable, because of the testimony by Stasi that 'well, Gigi had says to me'."

Stasi does not say that this statement was made to Tramunti in an effort to convince Tramunti that he should get Lentini out, Stasi says Inglese spoke directly to him, and as appears on T397, Gigi continues his conversation with Stasi and says ". . . just tell her to have patience, because Joe Crow has someone with property, that there is a possibility that we could get him out".

This certainly is a statement by Gigi with instructions to Stasi as to what to say.

It is therefore respectfully submitted that the Jury had no right in the face of this testimony by Stasi to infer that this statement was directed at Tramunti.

5. It is further interesting, indeed, that this Honorable Court (p. 2148 of the opinion) cites the following conversation; that Stasi supposedly had with Lentini on the phone, when Lentini is supposedly to have inquired, "what about the old

man? Can he do anything", Stasi said, "we just had that conversation now about trying to get you out. Gigi told me to tell you, to tell Donna, but being that I got you on the phone, the old man has someone with property, 'he'll try to get you out'".

And this Honorable Court goes on to say (p. 2148 of the opinion) "we hold the sum total of these conversations sufficient".

It is respectfully submitted that this quoted conversation of Stasi to Lentini proves that Stasi is an absolute liar, and as a matter of law, this Court should hold that Stasi is unworthy of being given any credence at all.

This testimony of Stasi when analyzed in a case of this kind, where the connection to Tramunti is so tenuous and where even this Honorable Court stated (p. 2145 of the opinion), "his connection with the case is not as strong as some of the other's, but when analyzed is still beyond the borderline of sufficiency".

We know from the record that Stasi's statement to Lentini is a lie, because (T396), Stasi says, that Gigi said "it's not the \$75,000.00, we need collateral. We need property". And Carmine says, "there's nothing I can do about that". And Gigi says to Stasi (T397), "just tell her to have patience, because Joe Crow has someone with property...".

Notwithstanding that Tramunti had stated when asked about property "there's nothing I can do about that", and notwithstanding that Gigi told Stasi to tell Lentini's girl that Joe Crow has someone with property, Gigi tells Lentini (T399), that "the old man has someone with property, he'll try to get you out".

It is respectfully submitted that this statement of Stasi to Lentini should not be used as part of the "sum total of these conversations", as appears on page 2148 of the opinion.

This testimony of Stasi certainly does not show a "ring of reliability" that is necessary to give it any value of circumstantial evidence.

## ARGUMENT

### Point I

The statement that Tramunti allegedly made, "well, try to get him out," was prior to any conversation about an organization or the usefulness of Lentini to the organization.

Therefore, at the time of that statement there is nothing in the record to indicate that Tramunti had knowledge.

If Tramunti had heard the conversation between Inglese and Stasi respecting Lentini, then at that point, and for the first time in the record, it could be said that Tramunti had knowledge, that Stasi and Inglese were engaged in drugs.

At this point, the Court could find association and knowledge against Tramunti, and if that be so, what did he say or do, after acquiring knowledge, which shows that he joined the conspiracy.

It is submitted that there is nothing out of Tramunti's mouth or any activity by him that would indicate joinder.

It is respectfully submitted that the Government must prove more than association and knowledge to implicate a defendant into a conspiracy.

This Honorable Court in *United States v. Freeman*, held, even where the evidence was extensive as to association and knowledge, and where the defendant expressed an interest in large quantities of cocaine, but had then done nothing about it:

"there is a wide gap between this and the showing required by our decisions that, in order to hold a



man for joining others in a conspiracy, he must in some sense promote their venture himself, make it his own"; citing *United States v. Falcene*, 109 F.2d 579, 581 (L. Hand, J.).

In, *United States v. Kroll*, 374 F.2d 776, the Court held, "evidence establishing knowledge of another's criminal activity and in aiding of it, does not of itself establish a conspiracy."

In, *DiRe v. United States*, 332 U.S. 581, the Court held "that mere association with conspirators is an insufficient basis for a finding of participation."

In, *United States v. Stromberg*, 268 F.2d 256, this Court held, "that mere association with conspirators is an insufficient basis for a finding of participation." This Court went on to say that it may seem strange that narcotic conspirators should discuss smuggling techniques at luncheon with persons not members of the conspiracy. But no inference unfavorable to the defendants may be drawn from this fact.

In, *United States v. Reina*, 242 F.2d 302, the Court held, "that the declaration of the defendant was competent against him, but it must be unequivocal."

In a case, where the Government seeks to bring a defendant into a conspiracy by reason of a declaration by the defendant, the Court must scrutinize the language and conduct of the accused in order to find some specific statement or some specific activity that is clearly unequivocal and earmarked only to the enterprise.

In this case, the element of specific statement or specific conduct after receiving knowledge (reference to Lentini's importance to the organization) is completely lacking as he said nothing and did nothing after supposedly receiving knowledge.

Even assuming that Tramunti had knowledge, the Government must prove joinder by a specific statement or specific conduct which is clearly unequivocal.

When the fact of joinder is sought to be proved by circumstantial evidence, and the circumstantial evidence does not establish connection and joinder, but leave outstanding a rational explanation otherwise, then the circumstances fail as being valueless from the standpoint of proof.

In, *United States v. Webb*, 359 F.2d 558, the evidence put defendant in the scene of events which could be, by fair inference, be deemed a part of a liquor distribution conspiracy. But the Court held, "that neither association with conspirators, nor knowledge that something illegal is going on, by itself, constitutes proof of participation in a conspiracy," and the Court went on further and held, "that the evidence of conspiracy, even if circumstantial, must be such, as to establish beyond a reasonable doubt the defendant's agreement to or participation in a plan to violate the law."

In, *United States v. Ragland*, 375 F.2d 471, the Court held:

"[I]t is true that an association with an alleged conspirator without more is insufficient to establish the necessary foundation for the admissibility of the incriminating statement; the accused must in some sort associate himself with the venture . . . participate in it as in something that he wishes to bring about . . . (or) seek by his action to make it succeed,"

citing; *United States v. Peoni*, 100 F.2d 401, where the Court said "the relationship is indeed too tenuous to permit its use as the basis of criminal liability."

In, *United States v. Cirrillo*, 468 F.2d 1233, this Court held, "there must be some basis for inferring that the defendant knew

about the enterprise and intended to participate in it or to make it succeed."

If the circumstances are rationally consistent with joinder and non-joinder, connection or non-connection, then the circumstances fail as proof and there is nothing to go to the Jury at all, because there is no legal qualitative evidence. *United States v. Reina*, 242 F.2d 302; *United States v. Euphemia*, 261 F.2d 441.

### Point II

An inference must be based upon a fact and not upon another inference.

It is hornbook law that an inference can only be drawn from an established fact.

In this case, this Honorable Court is permitting the Jury to draw six inferences one upon the other; Inference One, that the statement "we've got to try to get him out," was directed at Tramunti in the face of the testimony of Stasi that Gigi was talking to him (Stasi); Inference Two, that Tramunti heard the statement and adopted the statement, either through word, silence or deed; Inference Three that Tramunti was a member of the organization or conspiracy; Inference Four, that Tramunti was a director or higher-up in the organization to whom Inglese considered himself responsible; Inference Five, that Tramunti was on occasion looked to as a source of funds for organization purchases or bail; Inference Six, and that he was concerned when Inglese's business was slow.

All of these six inferences, one upon the other have not one shred of evidence in the record to back it up. There is not a scintilla of evidence in the record that Tramunti had ever put up a quarter for organization purchases or for bail, and the record shows that Tramunti was only concerned with the gambling

business at the LoPiccolo, as indicated by the phrase "what's happening at the club" and the testimony in the record, that Inglese had an interest in the card games at the club.

If this ruling is permitted to stand, that inferences can be piled one upon another inference, it is respectfully submitted, that the presumption of innocence will be emasculated.

In view of the very serious questions of law involved herein and the principles of law implicitly suggested by the Panel decision, it is respectfully prayed that a rehearing by the original Panel or in the alternative for a rehearing by the Court en banc be granted of this Court's decision of March 7th, 1975, and upon such rehearing, the statement of facts be corrected and the opinion and judgment be modified in light of the true facts, and reverse the judgment of conviction against the defendant-appellant, Carmine Tramunti.

### CONCLUSION

The petition for a rehearing should be granted.

Respectfully submitted,

s/ Herbert S. Siegal  
*Attorney for Defendant-  
Appellant Carmine Tramunti*

### CERTIFICATE

I, HERBERT S. SIEGAL, do hereby certify that this petition for rehearing is made in good faith and not for the purpose of delay, and in my judgment, upon sufficient grounds.

Dated: March 19th, 1975.

s/ Herbert S. Siegal  
HERBERT S. SIEGAL





# AFFIDAVIT OF SERVICE

Re: 74-1550

U.S.A. v. Tramunti, et al.

STATE OF NEW JERSEY :  
 : ss.:  
COUNTY OF MIDDLESEX :

I, Muriel Mayer , being duly sworn according to law,  
and being over the age of 21 upon my oath depose and say  
that: I am retained by the attorney for the above named  
Appellant .

That on the 21st day of March , 19 75 I served  
the within Petition for Rehearing in the matter  
of United States of America v. Carmine Tramunti, et al.  
upon (See attached list)

by depositing two (2) true copies of the same securely enclosed in a post-paid wrapper, in an official depository maintained by the United States Government.

Muriel Mayer  
Muriel Mayer

Sworn to and subscribed  
before me this 21st day  
of March 1975.

Louise Lotta  
A Notary Public of the  
State of New Jersey.

**LORRAINE LEOTTA**  
NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires April 13, 1977

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